Section 1983 Liability And Custodial Suicide: A Look At What Plaintiffs Face in Court

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Abstract

This paper reviews recent federal court rulings on section 1983 cases relating to custodial suicide. The criteria for succeeding in such cases was not clearly articulated until the *Farmer v. Brennan case* was decided by the United States Supreme Court in 1994. Unfortunately for the families of deceased inmates, the Farmer ruling made the already challenging task of prevailing in federal court even more difficult. This paper includes an analysis of the defenses available to corrections personnel faced with a section 1983 lawsuit for a correctional suicide that occurred on their watch.

Keywords: jail suicide, prison suicide, section 1983 litigation

Introduction

When police or corrections personnel take custody of an alleged offender, the government becomes responsible for that person's safety and general well-being (*Estelle v. Gamble*, 1976). Officers are responsible for not only keeping inmates safe from each other, but they are obligated to keep inmates safe from themselves (Collins, 1995; Hanser, 2002). Officers and civilian staff in prisons, jails and police lock-ups have to deal with the possibility that inmates under their supervision might attempt to take their own lives.

Correctional staff members have a moral duty to provide care for inmates and work to prevent suicides. Custodial suicide is a great tragedy that affects staff members emotionally, but there are also legal problems that frequently arise from such an event. The deceased's family must struggle to understand how their relative could succeed in committing suicide while being supervised by the correctional staff. The frustration on the part of the families often leads them to state or federal court, where they file civil suits for wrongful death or a violation of the inmate's civil rights. Schanger (2003) researched litigation in large jails and state prison systems and found that 36 percent of large jail respondents and 33 percent of responding state prison systems had been sued for suicide-related issues over the past three years.

Legal Options For Families

The families of deceased inmates, or the inmates themselves in the event of an unsuccessful suicide attempt, who are looking for relief in civil court have the option of filing a tort claim or a civil rights claim. A tort is some injury or wrong for which a court provides damages or compensation (Anderson & Dyson, 2001), and this type of claim is heard in state courts. Wallace and Roberson (2000) identified two areas where torts apply to corrections officials: The first category is intentional torts in which the inmate is alleging that officials intentionally inflicted harm, and this includes cases involving false imprisonment, assault or emotional distress. Second, negligence torts involve injuries that occurred as a result of corrections officials acting carelessly or providing sub-standard care, rather than intentionally inflicting harm. Successful tort actions involve a demonstration of three elements: (1) a legal duty owed to the plaintiff by the defendant, (2) a breach of that duty, and (3) an injury as a result of that breach (Anderson & Dyson, 2001; Wallace & Roberson, 2000). A successful tort action will result in a financial reward to the

plaintiff, and this reward can take the form of compensatory damages for any injuries or punitive damages to punish the defendant for improper conduct (Wallace & Roberson, 2000). A disadvantage to inmates in filing a tort claim is that attorney fees will not be awarded, nor is any injunctive relief available (attorneys generally receive payment from the money awarded to the plaintiff – see Anderson & Dyson, 2001). Tort claims for suicide, however, tend to be easier for plaintiffs to win than the federal civil rights claims that will be explained next (Robertson, 1993).

The other option for inmates seeking relief in courts is title 42, section 1983 of the U.S. Code, commonly referred to as "section 1983". This is the provision that allows the families of inmate suicide victims to sue government entities for a constitutional violation (Johnson, 2002). Judges deciding the case of *Monell v. Department of Social Services* (1978) established that a civil rights violation under section 1983 occurred when; (1) A person was deprived of a right, privilege or immunity guaranteed under the Constitution and federal laws, and (2) The deprivation resulted from official policy or custom of a local government entity (Wallace & Roberson, 2000). Wallace and Roberson (2000) stated that if corrections personnel operate a certain way and if high-ranking officials know of these activities, the activities can be considered custom. Additionally, behavior of high-ranking officials might be considered agency custom if that behavior is repeated regularly, and the official is a decision-maker for the agency.

An advantage of section 1983 claims over tort claims is that in addition to monetary awards, it is possible to win an injunction for the corrections department to cease to perform a certain practice. Additionally, it is possible for plaintiffs to be awarded attorneys' fees, rather than having the fees taken out of the money awarded to the plaintiff (Anderson & Dyson, 2001). The remainder of this paper focuses on section 1983 cases relating to custodial suicides.

Estelle v. Gamble And Inmates' Rights To Medical Care

The landmark case of *Estelle v. Gamble* (1976), although not a custodial suicide case, did recognize the provision of inmate medical services as an issue relating to the Eighth Amendment ban on cruel and unusual punishment. Inmate Gamble injured his back while working in a state prison in Texas. The inmate was seen by medical staff for this injury and others seventeen times over a three-month period. During this time, the inmate was given a variety of medications and was excused from work for most of the time. The inmate instituted a civil rights action under section 1983 against corrections officials including the chief medical officer of the prison hospital. Among Gamble's complaints was that he was put in isolation for refusing to work after the medical staff cleared him to work, his back was not x-rayed, and one of his prescriptions was not filled for four days (the prescription was lost).

Gamble did not win, but the case is significant for establishing the requirements for success in correctional medical care cases. The United States Supreme Court ruled that in order for a court to rule in favor of a plaintiff, the plaintiff must demonstrate that the corrections personnel exhibited "deliberate indifference" towards that person's medical needs. The justices explained that "deliberate indifference to a prisoner's serious medical needs constituted cruel and unusual punishment under the Eighth Amendment and gave rise to a civil rights cause of action under 42 USCS 1983, regardless of whether the indifference was manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care of intentionally interfering with treatment once prescribed" (pp. 104-105). The justices did note that inmates would not succeed in taking action with every claim of poor medical treatment, since a violation of the Eighth Amendment required a "wanton infliction of unnecessary pain." In other words, simple malpractice or a misdiagnosis was not intentional, and therefore did not constitute a civil rights violation. In this particular case, the Texas Department of Corrections was not considered to be

deliberately indifferent, since they did provide medical care for the inmate, and the temporary misplacement of the prescription was ruled an accident rather than a deliberate attempt to harm the inmate.

The *Estelle* case involved an inmate who was complaining about the care he received for a physical ailment, but the Supreme Court's ruling had an impact on litigation possibilities for both the physical and mental health care of inmates. Hanser (2002) noted that following the *Estelle* ruling; several lower courts began to include mental health care as a serious medical need for inmates. The *Estelle* court recognized that deliberate indifference towards inmate medical care is an issue covered by the Eighth Amendment, but the court did not provide a definition for deliberate indifference. The U.S. Supreme Court clarified this matter in *Farmer v. Brennan* (1994).

Farmer v. Brennan And Establishing Deliberate Indifference

Farmer v. Brennan (1994) involved an inmate-inmate assault rather than a suicide. The case involved a biological male who had undergone estrogen therapy, received silicone breast implants, submitted to an unsuccessful testicle-removal surgery and had been taking hormonal drugs smuggled into the prison. In addition to the biological changes that the inmate underwent, he also wore his clothes in a feminine manner. Farmer spent most of his sentence in segregation for his own safety. He was transferred to another prison due to disciplinary reasons, and was placed among the general population. Farmer voiced no objections to this placement, but he later claimed that within two weeks he was beaten and raped by another inmate in his cell (*Farmer v. Brennan*, 1994).

Farmer sued, claiming that his placement in the general population constituted deliberate indifference, since the prison administrators should have known that a transsexual would be in danger if placed in the general population. In other words, the plaintiff was arguing for a "purely objective test" for determining liability, meaning that the defendants should be held accountable whether they knew of the risk or should have known of that risk. The court did not rule in favor of the plaintiff but did explain under what conditions a prison official can be held responsible for injury to an inmate. Justice Souter, who wrote the majority opinion, stated that "A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." (*Farmer v. Brennan*, 1994; p. 837) In other words, it is not enough for there to be an obvious risk to an inmate's health and safety (objective test). If such a risk exists, officials may not be held responsible unless the plaintiff can prove that they were aware of the risk. According to Hanser (2002) this represented a shift in the standards traditionally used by the court in determining reckless knowledge. Prior to the *Farmer* decision, some, but not all, courts used an objective standard which required that the plaintiff demonstrate that officials should have known of a problem. The standard set by the justices deciding the *Farmer* case was for both an objective and subjective test. In order to be successful, the plaintiff must show that the deprivation suffered by the inmate is "objectively, sufficiently serious" (p. 823), thereby fulfilling the objective standard. For the subjective standard, by contrast, the plaintiffs must demonstrate that the deprivation was "unnecessary and wanton" and the defendants must have held a "sufficiently culpable state of mind" (p. 823) meaning that the plaintiff needs to show that the officials actually knew of the danger to the inmate and deliberately chose to ignore it.

According to the standards set in the *Farmer* ruling, officials may not be found to have exhibited deliberate indifference even if the inmate suffers harm, provided that the administration can demonstrate that they did make a reasonable response to the risk. Only if an official knows of a risk to an inmate and fails to act or act in an unconscionable manner will the court rule against the corrections employee.

Souter explained "An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage and if harm does result society might well wish to assure compensation. But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." (p. 826)

To summarize, in the wake of the Farmer decision, plaintiffs have to establish three sets of facts when demonstrating that correctional staff were deliberately indifferent to an inmate's medical need. First, the plaintiff must demonstrate that the deceased had a "serious medical need." Second, the defendants must have been aware of that need, and third, the defendants were "deliberately indifferent" to that known medical need. All three of these factors must be established in order to establish a constitutional deprivation.

Defenses Against A Section 1983 Claim

Summary Judgment and Immunity

Section 1983 suicide litigation cases are frequently dismissed before they reach trial due to a grant of summary judgment, or a successful claim of immunity by corrections officials. Summary judgment is granted if the court decides that "the plaintiff has failed to prove that a genuine issue of material fact exists between the parties" (Johnson, 2002, p. 1241). During this phase, the court views the evidence in a light most favorable to the plaintiff, and the judge will discard claims that he or she believes are not supported by the facts before they proceed to trial (Johnson, 2002).

Government officials are immune from litigation under certain circumstances. Judges, for example, have absolute immunity, protecting them from all lawsuits pertaining to their work (Anderson & Dyson, 2001). Corrections officials are not eligible for such protection, but they may make a successful argument for qualified immunity under certain circumstances. Government employees who are not violating clearly established constitutional rights, which a reasonable person should be aware of, tend to receive qualified immunity. The question for the courts to determine is whether the employee knew or should have known that the action in question violated inmates' rights. Officials can claim to be operating in good faith if they can demonstrate that they were working to adhere to prison regulations and constitutional protections (Anderson & Dyson, 2001).

The standard for qualified immunity for government employees was articulated in a case involving the work of school officials. In *Wood v. Strickland* (1975) the Supreme Court Justices heard arguments about whether school administrators who had expelled students for bringing alcohol to school should be granted qualified immunity for performing their duties in good faith. The Court decided that in determining good faith, both objective and subjective standards should be used. Specifically, Justice White wrote in the majority opinion (p. 322) that:

> The official himself must be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law on the part of one entrusted with supervision of students' daily lives than by the presence of actual malice. To be entitled to a special exemption from the categorical remedial language of § 1983 in a case in which his action violated a student's constitutional rights, a school board member, who has voluntarily undertaken the task of supervising the operation of the school and the activities of the students, must be held to a standard of conduct based not only on permissible intentions, but also on knowledge of the basic, unquestioned constitutional rights of his charges.

In other words, the professional is expected to have a general knowledge of basic rights for the population they supervise.

Defenses Relating To *Farmer v. Brennan*

Justice Souter acknowledged that three possible defenses for prison administrations would arise out of the *Farmer* decision. The first defense is that prison officials can show that they were unaware of the facts indicating that the inmate was in danger. Assuming that the first defense is not possible, the second defense is that while the administration acknowledges being aware of the facts, they believed that the risk was either insubstantial or nonexistent. Third, officials can claim that they did provide a reasonable response to the risk, but the injury occurred anyway, despite the efforts of the administration. Examples of each of these defenses, successful and unsuccessful, are provided below.

Defense 1: Officials Were Unaware of the Facts Indicating the Inmate was in Danger. Although the aforementioned shift from the objective standard to subjective was a blow to inmates wishing to institute a civil rights action, the *Farmer* court did provide inmates with some hope for future cases. The court's ruling seemed to signal the end of the "individual specific" rule. Under this rule, the plaintiff would have to demonstrate that the corrections administration knew about a specific threat to that particular inmate (Hanser, 2002). In an analysis of the impact of the *Farmer* case on custodial suicide liability cases, Robertson (2004) stated that if an official is pleading ignorance of a risk to the court, the court can conclude that the risk was so clear that the official must have been aware of the danger. For example, risk of assault for an inmate can be derived from more general information, such as evidence that a given area inside the jail was a known trouble spot for violence, rather than specific threats against a particular inmate (*Hale v. Tallapoosa County*, 1995).

Hanser (2002) argued that while *Farmer v. Brennan* initially appeared to benefit inmates when it jettisoned the individual specific rule, subsequent rulings revealed that the courts have been inconsistent in abiding by the *Farmer* court's decision on this. *Hale v. Tallapoosa County* is an example of the lower courts adhering to the removal of the individual specific rule. Inmate Hale, who was being held for failing to appear on a marijuana charge, was locked in a cell with several inmates, some of whom were being held for violent offenses. Hale was beaten by these inmates, and he brought a civil rights suit claiming that the jail officers were deliberately indifferent to the risk of violence in that part of the jail. When the corrections officials sought to have the case dismissed, the court declined to do so. The court ruled that although the administrator had no knowledge of specific threats against Hale, violence had been a regular occurrence in that part of the jail, so the administrator knew of a substantial generalized risk to Hale and other inmates housed there. Despite awareness of this risk, the administrator did not take any action to prevent violence in that part of the jail. Since the court ruled that the administrator was aware of the risk and disregarded it, this amounted to deliberate indifference.

While the court deciding *Hale v. Tallapoosa County* (1995) applied a more general standard in determining whether the defendants were aware of the risk to inmates' health and safety, some courts have continued to use the individual specific requirement. In *Frake v. City of Chicago* (2000), the inmate's family sued the city following his suicide. The family noted that there were twenty suicides and 163 suicide attempts, all by hanging, in the jail from December 4, 1990 through November 18, 1997. Additionally, the plaintiff claimed that the jail did nothing about the horizontal metal bars in the cells that could be used for hanging. Despite the evidence that the administration was aware of the general risk of suicide by hanging for inmates in the jail, the court ruled that there was no evidence that inmate Frake himself was suicidal, therefore, the court ruled in favor of the defendants.

Another example of courts continuing to use the individual-specific was provided by the United States District Court of Michigan, Southern Division. The court ruled that despite the custodial and medical staff's knowledge of an inmate's mental illness, there is no evidence indicating that the staff was aware of a suicidal threat. In other words, the plaintiff might be able to establish that the staff should have

known that she was suicidal, but the case could not proceed, since she did not demonstrate that they actually did know that she was suicidal (*House v. County of Macomb*, 2004).

Defense 2: The Administration Acknowledged Being Aware of the Facts Indicating Possible Danger, but they Believed the Risk was either Insubstantial or Nonexistent. Corrections officials sometimes become aware of past suicide attempts or threats of an upcoming attempt and for a variety of reasons do not interpret that information as an immediate problem for the inmate. Robertson (1993) noted that case law requires a four-prong test for satisfying the "awareness" factor listed as the second requirement for establishing deliberate indifference. The four facts that plaintiffs need to establish are; (1) Inmate previously threatened or attempted suicide; (2) The prior threat or attempt is known to defendants; (3) The prior threat or attempt was somewhat recent; and (4) The prior threat or attempt appeared genuine. If any one of these facts is not proven by the plaintiff, the court will find in favor of the defendant.

In *Turney v. Waterbury* (2004), Turney told officers in the Pennington County Jail that he was going to "hang it up." When he was transferred to the Bennett County Jail three days later, the sheriff who conducted the inmate transport told the supervisor at the Bennett County Jail about the threat of suicide. The sheriff also informed the supervisor of Turney's comment that if he received a long prison sentence, he would kill himself and someone else. Before leaving for the night, the supervisor told an officer to keep an eye on Turney, but that the officer should not go into his cell alone for any reason. The officer was not given an explanation for this warning. For this reason, the officer did not attempt to cut down Turney when he was found hanging in his cell. The court denied summary judgment to the defendants' due to the fact that corrections officials were aware of the suicidal risk, yet they did not pass that information to the officers watching the inmate.

The U.S. Court of Appeals for the Seventh Circuit heard the case of *Cavalieri v. Shepard* (2003) and concluded that the arresting officer (Shepard) was deliberately indifferent in neglecting to inform the jail staff that Cavalieri was suicidal. The officer was at the crime scene when Cavalieri was holding his girlfriend hostage, and he threatened to kill her and himself. When they arrived at the jail, Cavalieri asked Shepard if he could speak to a counselor. Despite the officer's assurances that he would arrange that, it never happened. Additionally, Shepard was told by the inmate's mother that her son was in a fragile mental state and had called the crisis hotline the night before. She also told the officer that her son had been on suicide watch at the jail the previous month. Shepard claimed that after conducting interviews with Cavalieri, the inmate seemed fine. He was later placed in a cell with a telephone and a strong cord. The inmate wrapped the cord around his neck, thereby depriving himself of oxygen. Brain damage typically begins to occur after a person has been deprived of oxygen for approximately four minutes. As a result of the deprivation, Cavalieri suffered severe brain damages and remains in a vegetative state. The court ruled that Shepard should not have relied exclusively on his impressions of the inmate during the interviews, but should have used the information obtained at the crime scene and from Cavalieri's mother. The information from the crime scene and that provided by the inmate's mother was enough to demonstrate that at least one government official involved in this case was aware of the danger to the inmate. Once Shepard became aware of the fact that Cavalieri was suicidal, he, as a sworn officer, was obligated to take steps to protect the inmate from himself. Documents relating to the case made no mention of whether the jail had a suicide prevention policy that covered communication issues, but the breakdown in communication was still viewed by the courts as a demonstration of deliberate indifference.

In a similar case, a sheriff and deputy were denied qualified immunity when an offender arrested for attempted murder-suicide was placed in a cell with tie-off points (places where an inmate can attach a noose). An inmate had

previously committed suicide in that cell by using those tie-off points. The inmate was given a sheet and placed in the cell without supervision for at least 45 minutes (*Jacobs v. West Feliciana Sheriff's Department*, 2000). In this case, the inmate was clearly suicidal, having attempted suicide at the crime scene (the gun jammed), but was placed in a cell with the tools to commit suicide and more than enough time to do it. The court ruled that given the officers' knowledge that the inmate was suicidal and that inmates had previously committed suicide in that particular cell, there was a genuine issue of fact that needed to be addressed by a jury. The court ruled that the case should proceed to trial instead of granting the officers immunity for their actions.

The City of Shreveport, Louisiana was recently ordered to pay three million dollars to the family of an inmate who hanged herself after she warned the staff that she would commit suicide. She did so by using her pants to hang herself from a shower rod (Hayes, 1999). The inmate had apparently warned jail staff that she was suicidal. Despite this, she was placed alone in a cell. She was not given a psychiatric assessment, nor did the jail implement any suicide prevention measures.

In *Boncher v. Brown County* (2001), the primary issue to be resolved was whether the inmate was joking when he told the screening officer that he had attempted suicide "a couple days ago." Boncher immediately added that he was fine now, and according to the booking officer, he seemed jovial and cooperative. Boncher committed suicide 45 minutes after he was placed in a regular cell instead of an area with close observation. The court ruled that the plaintiff lacked any evidence to indicate that anyone in booking thought that Boncher's response to the suicide question was serious.

The defense that an inmate was joking was also successful in one Iowa case. Sam Bell was arrested for driving while under the influence. During his intake screening, Bell said that he would shoot himself. The admissions staff did not take him seriously, so she did not check the box on the intake form that indicated that the inmate was suicidal. After Bell's suicide, his family sued the county. The judge did deny a grant of summary judgment to the defendant on the grounds that the inmate made a threat, and the threat was ignored by a correctional staff member (*Bell v. County of Washington, Iowa,* 1990). This denial was, however, overturned on appeal because the court believed that the inmate's joke was a "single off-hand comment about shooting oneself when no gun is available" and that "cannot reasonably constitute a serious suicide threat" (*Bell v. Stigers,* 1991. p. 1344).

The courts will only consider a previous suicide attempt a warning sign if the attempt was recent. In *Holland v. City of Atmore* (2001) Holland was taken to the hospital for a suicide attempt in December 1997. He was arrested and placed in jail in February 1998, where he was put on suicide watch for banging his head against the bars. In July 1998, he committed suicide in the local jail. The officer who handled the 911 call for the 1997 suicide attempt was also the jailer on the night of his suicide. The officer was unaware of the February head-banging incident, but he did know about the incident in December of 1997. The court found that the December suicide attempt did not make the risk so obvious as to require a special duty of care for the inmate. The court concluded that "An individual that threatens to attempt suicide has unequivocally expressed an immediate desire or intent to end his life, and that desire or intent may readily be assumed to persist only until the passions provoking is have cooled sufficiently for reason and self-love to regain primacy. A strong likelihood of self-annihilation may remain for periods of a few hours, or even a few days after a suicide attempt or threat, but the plaintiffs have identified no support for the proposition that an individual may remain on the brink of suicide for months at a time, much less that Holland did so (p. 1314)."

A series of recorded suicide attempts, however, is considered enough information to warrant medical care and proper supervision. In *Hall v. Ryan* (1992), the Seventh Circuit Court of Appeals denied a request for qualified immunity, since Clifford Howard Jr. had been arrested

twenty-eight times and detained by the police nine times. Nine months before the suicide attempt that left him in a coma, Howard was arrested and threatened to commit suicide. Consistent with the Municipal Jail and Lockup Standards, he was taken directly to the hospital. That arrest report contained information about his threat, hospitalization and several previous suicide attempts. The police chief met with Howard's mother a few months before his final suicide attempts. The mother told the chief of his problems and suicidal condition, plus she gave the chief documents pertaining to his condition. This prior experience with the detainee, combined with his erratic behavior the night he attempted suicide was determined to be enough evidence to have a jury trial.

The *Estelle* court did emphasize that medical mistakes do not amount to deliberate indifference, nor is the choice of one medically reasonable treatment over another grounds for a lawsuit. Exceptionally poor medical care that results in death, however, does meet the deliberate indifference standard. Billy Wade Montgomery committed suicide in the Reception and Guidance Center in Southern Michigan shortly after being removed from suicide watch. A psychologist (McCrary) put him on suicide watch but did not put the report in the inmate's file. When Montgomery received a routine physical the next day, the physician took him off suicide watch, because he did not see the psychologist's report. After the inmate was removed from suicide watch, the psychologist met with Montgomery again. Montgomery said that he was 'no longer suicidal.' Despite McCrary's belief that he was suicidal the previous day and his knowledge that Montgomery was having trouble with other inmates, he chose to keep him off suicide watch. Following Montgomery's death, the Sixth Circuit Court of Appeals ruled that the case should proceed to a jury trial, since the inmate was removed from suicide watch without the psychologist making any "reasoned assessment or evaluation of the patient's suicide risk" (*Comstock v. McCrary*, 2001, p. 710).

Defense 3: Officials did provide a reasonable response to the risk, but the injury occurred anyway, despite the efforts of the administration. Corrections departments might be able to clear themselves of wrong-doing, at least in Federal Court, by demonstrating that while they were not successful in preventing the suicide attempt, they did respond to the inmate's suicide risk. The federal court distinction is made here, because suing for negligence in state court is easier for the plaintiff. For negligence, the law allows for a broader definition of "who is owed a duty to be protected from suicide" and "it also requires a higher standard of care in discharging that duty" (see Robertson, 1993, p. 828).

The case of *Williams v. Mehra* (1999) illustrates a successful application of this defense. Inmate Wade had attempted suicide by hoarding his anti-depressant medication and overdosing on it. The jail responded to this by prescribing him a liquid medication. Wade was under the care of a psychiatrist who adjusted his medication in order to help him. During the process of adjusting his medication, Wade was prescribed pills, but was ordered to take them in a "pill line" where ingesting medications was supervised by a nurse. Wade managed to deceive the nurse into thinking that he was taking the medication when he was actually hording it. He later committed suicide by overdosing this medication. The court granted the correctional staff involved in this case qualified immunity, since they were making an effort to treat and supervise the inmate.

Another example of a municipality successfully arguing that they provided the inmate treatment can be found in *Serafin v. City of Johnstown* (2003). Joseph Serafin was put on suicide watch, and in this particular facility, suicide watch meant that the clerk would monitor the inmate through closed-circuit television while attending to her usual clerical duties at her desk. The clerk was monitoring Serafain and other inmates by periodically switching the channel on the television to check on each inmate. When the clerk switched to check on Serafain, she found him hanging in his cell. As a result of this suicide attempt, he suffered severe brain damage. Serafin's family sued, claiming deliberate indifference, but the US Court of

Appeals, Third Circuit granted the defendants summary judgment. The court stated that while the jail's prevention policy could have been better, the staff did follow the policy, and the injury occurred despite the staff's efforts.

Unfortunately, the outcome of this and the case that follows seems to indicate that corrections agencies might be better able to avoid compensating victims if they either have a poor written suicide prevention policy, or none at all. While the City of Johnstown was successful in the previously mentioned lawsuit, the case of *Sisk v. Manzanares* (2002) provides an example of how a department with a more comprehensive prevention policy appears to be at a higher risk of losing in court.

Inmate Sisk's mother called Department of Corrections sergeant Joel Manzanares to express her concern that her son was suicidal. Sergeant Manzanares ordered one of his officers to search Sisk's cell, and the officer found a tear-stained suicide note. The sergeant ordered Sisk removed from his cell and placed in "hard lockdown," a cement cell that had no protrusions that could be used to attach a noose. This was contrary to DOC custom, since suicidal inmates were typically put in rubber cells (that afford more protection for the inmate), and the only time "hard lockdown" was used was when the rubber cells were already occupied. The cell where Sisk was placed did have a metal plate attached to the wall. Also contrary to DOC custom, the sergeant ordered that the inmate be given a woolen blanket rather than a tear-away paper shroud or a suicide-prevention blanket (the department's stock of suicide prevention blankets had run out). The cell where Sisk was placed could not be viewed completely from its window, but the officers could see the entire cell with the security camera. No one was scheduled to watch the security monitors on third shift, and the officers did not do their 15-minute wellness checks on the inmate as required. The inmate was able to move the metal plate in the cell, attach the blanket to it, and commit suicide. The court denied the defendant's summary judgment, due to the evidence that the sergeant failed to abide by the facility's prevention program (*Sisk v. Manzanares*, 2002).

Correctional Medical Services (CMS) was ordered to pay 1.75 million dollars in compensatory and punitive damages in 2004 for failing to follow its own written suicide prevention policies (*Woodward v. Correctional Medical Services*, 2004). Justin Farver committed suicide in the Lake County Jail in Illinois. During the trial, two nurses testified that CMS routinely had a month-long backlog of intake evaluations of inmates. When Farver was incarcerated, a nurse who had never done an intake screening before was told to do it. The nurse had not completed a single element of the nurse orientation checklist, nor did she complete the 90-day orientation program. When asked if he had thoughts of killing himself, Farver said that he did, and the nurse noted that he had a history of psychiatric treatment and suicide attempts. The nurse did not report this history in the intake summary, nor did she notify the shift commander or refer him for a mental health evaluation. During Farver's time at the jail, both the social worker and psychiatrist also noted that the inmate was suicidal, but neither recommended a suicide watch. The court concluded that had the staff followed the CMS policies, the inmate would have received mental health treatment and been properly supervised.

Failure to stop a suicide attempt while in progress has been interpreted by the courts as failure to respond to a serious medical need. The courts have ruled against prison and jail systems when officers have failed to promptly cut down inmates who have been found hanging in their cells. The failure to immediately respond to this potentially deadly situation has been interpreted by the courts as meeting the deliberate indifference requirement (see *Owens v. City of Philadelphia*, 1998; *Turney v. Waterbury*, 2004).

Conclusion

Section 1983 lawsuits involving custodial suicide were not an option until the late 1970s. Even though the inmate bringing the *Estelle v. Gamble* (1976) lawsuit lost the case, it represented a victory for inmates as the U.S. Supreme Court recognized medical care as an issue to be considered under the Eighth Amendment. The absence of a formal definition of deliberate indifference following the *Estelle*

ruling resulted in some confusion as to whether the lower courts should be using an objective or subjective test in determining whether corrections personnel knew of the suicide risk for the inmate-in-question. The establishment of criteria for correctional staff's deliberate indifference to an inmate's health and safety needs was not addressed until 1994.

The *Farmer* court's decision to require a subjective test in determining whether corrections personnel were aware of the suicide risk made it even more difficult for failures of inmates to succeed in section 1983 cases. Plaintiffs must demonstrate that an inmate had a serious medical need, then they must show that specific correctional personnel *knew* of that need and intentionally disregarded that risk to the inmate's health. The absence of any one of these factors will likely result in the case being thrown out before it reaches a jury. The *Farmer* court stated that deliberate indifference "describes a state of mind more blameworthy than negligence" (p. 1978), since negligence includes inadvertent behavior on the part of corrections officers (Kappeler, Vaughn, & Del Carmen, 1991).

The initial optimism felt by inmates' rights attorneys and deceased inmates' families about the removal of the individual-specific requirement for suicide cases waned when it became clear that the courts would not be uniform in their rulings on this subject. Instead of allowing for the determination of suicide risk based on more general information, such as knowledge of past suicides in a part of a facility, or that a particular inmate is mentally ill, some post-*Farmer* courts have continued to use the individual-specific rule.

Since the *Farmer* ruling, federal courts have ruled that history of a previous suicide attempt might not be enough to warrant extra care by corrections personnel if the attempt occurred eight months prior to the successful suicide attempt in jail (*Holland v. City of Atmore* 2001). The courts have also indicated that acting in accordance with a facility's suicide prevention policy is enough to prevent the staff from being held accountable for the inmate's death. The problem is that the courts are willing to rule this way even if they determine that the prevention policy is a poor one (*Serafin v. City of Johnstown*, 2003).

The examples presented here illustrate that the families of inmates face a difficult task in convincing the federal courts that corrections personnel should be held responsible for the self-inflicted deaths of inmates. Even if the plaintiffs can provide convincing evidence that the staff was aware of a suicidal threat or a history of suicide attempts, it might not be enough to win in court. The defendants might also prevail if they can demonstrate that they did make some effort to prevent the suicide -even if that effort was insufficient.

Not all custodial suicides are preventable. Inmates have all day and night to work on ways to harm themselves or others, and some suicides are going to occur despite the best efforts of corrections staff members. The federal courts, however, have given police and corrections departments such latitude that it is very rare that inmates' families receive any compensation for supervision and treatment that even some federal judges have admitted is poor. These courts are not able to rule in favor of the plaintiffs, because the standard for deliberate indifference is so high and difficult to achieve.

Litigation is one way to address the problem of custodial suicide by convincing corrections agencies that they need to improve their supervision of inmates. A majority of jails and prisons throughout the United States that have established training programs for staff and comprehensive suicide prevention programs for the inmates. The National Center on Correctional Health Care (NCCHC) listed essential components of any suicide prevention plan, including: prevention training for correctional, medical and mental health staff, intake screening, procedures for referral to mental health and/or medical personnel, re-assessment of inmates following a crisis period, effective communication between staff members involved with the inmate, supervision and safe housing options for suicidal inmates, timely medical intervention, proper reporting

procedures, and a review of suicides after they have occurred (Hayes, 1999). Development of a comprehensive suicide prevention plan, proper training, and encouragement from administration can prevent suicides and the litigation that tends to follow these events.

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